## REMARKS

Claim 10 has been canceled without prejudice or disclaimer. Claims 1 and 14 have been amended. Therefore, the claims pending in the application are claims 1, 6, 11-14 and 17.

Reconsideration and withdrawal of the rejection of the claims of the above-identified application in view of the amendments and remarks presented herein is respectfully requested.

Claim 1 has been amended to recite that spray-dried animal serum is administered via the water supply of the poultry, as suggested by the Examiner. This amendment is supported at page 3, line 29-page 4, line 6, and by Example 1 (see, e.g., page 11, lines 4-10). The advantages of administering serum, as opposed to untreated plasma, are disclosed at page 8, lines 20-26 and at page 9, lines 24-28. This amendment moots the Examiner's rejection of claims 1 and 6 under 35 U.S.C. § 112(2) as set forth at page 2 of the Office Action.

At pages 2-3 of the Office Action, the Examiner rejected claim 14 under 35 U.S.C. §112(2) as "unclear" because it recites that the serum is administered "during" all stages of the life cycle of the poultry. The amendment to claim 14 to replace "during" with "at" overcomes this rejection. This amendment is supported at page 8, lines 27-28 of the specification. The dictionary definition of the preposition "at" has only one relevant definition: "used as a function word to indicate age or position in time" [~all stages of the life cycle] (Webster's Ninth New Collegiate Dictionary). Therefore, withdrawal of this rejection is appropriate and is respectfully requested.

At pages 3-4 of the Office Action, the Examiner rejected claims 1, 6, 10-14 and 17 for obviousness-type double patenting over claims 1-4 and 6-8 of Weaver et al. (U.S. Patent No. 6,004,576) in view of U.S. Patent No. 6,086,878. This rejection is respectfully traversed. The claims of the Weaver '576 patent are directed to a method of increasing weight gain and feed efficiency of animals in the first stages of life by administering a supplement made by forming dried animal plasma into "granulated particles" having a specific size and density. Claim 1 specifically recites "administering said animals a supplement consisting essentially of granulated animal plasma." Thus, it is not understood how the Examiner can draw the conclusion that "[t]he claims are not limited to the administration of dry serum granules."

The fact that claim 2 recites "oral" administration cannot be read to suggest dissolving the granules in the water supply of chickens. This would defeat the stated purpose and novel

features of the invention, which lie in the recited compression and screening process. In fact, the Examiner states that "the specification of '576 does not teach addition of the granules to water."

The deficiencies in the '878 patent are detailed below. Specifically, Applicants dispute that Adalsteinsson teaches that spray-dried blood or plasma can be simply substituted for the powdered egg yolk of the hyperimmunized animal. Therefore, it is respectfully submitted that, as amended, the present claims are not obvious in view of the claims of the '576 patent, considered alone or in combination with the Adalsteinsson '878 patent.

However, upon notification of allowable subject matter based on the Rule 132 declaration submitted herewith, Applicants will file a terminal disclaimer to moot this rejection.

At pages 5-9 of the Office Action, the Examiner rejected claims 1, 6, 10-14 and 17 as obvious over the Weaver et al. '576 patent in view of the Adalsteinsson (U.S. Patent No. 6,086,878). This rejection is respectfully traversed.

As noted by the Examiner, the '576 patent, fairly read, does not suggest preparing a specific, granulated dry plasma product and then destroying its novel and advantageous properties by dissolving it in an animal's water supply. "Oral administration" in the context of the '576 patent can only be logically read to encompass ingestion of a dry feedstuff.

It is respectfully submitted that the Examiner is applying impermissible hindsight to remedy the deficiencies of the Weaver '576 patent using the disclosure of the '878 patent. This is evidenced by the fact that the Examiner incorrectly asserts that the '878 patent teaches using spray-dried plasma.

More specifically, the Examiner argues that:

> Adalsteinsson taught the egg yolk source of the antibodies can be substituted with blood plasma (serum) of the target animal, which was a chicken (column 8, line 65) and is a livestock animal as claimed in claims 11 and 12.

This is not the case. The sections of Adalsteinsson cited by the Examiner do not mention spray-dried plasma and do not teach that administration of spray-dried plasma, even following hyperimmunization of the donor animal (which applicants do not conduct), would provide an effective amount of the "gastrointestinal neuron-modulator antibodies" that are an essential feature of the '878 patent. Rather, the cited sections read as follows:

> The antibodies to be transformed generally are derived from milk, colostrum, serum, egg yolk and even monoclonal antibodies from hydridomas [col. 2, lines 4-9].
>
> * * *
>
> In addition to eggs and milk, antibodies can be obtained from whole blood, plasma or serum from any inoculated animal [col. 7, lines 39-42].
>
> * * *
>
> While eggs, and more preferably, hyperimmunized eggs, are the preferred source of massive quantities of antibodies, it is possible, as stated earlier to collect the antibodies from milk, whole blood, plasma or serum of the target animal [col. 8, lines 60-65]. [emphasis added]

This section does not mention spray-drying plasma or serum. Rather, these sections reference antibody extraction steps which are set forth in more detail at col. 9, lines 1-11.

At page 7 of the Office Action, the Examiner argues:

> Adalsteinsson also taught mixing the spray-dried source in drinks. Because water is a drink that is fed to poultry, the teachings of Adalsteinsson include the addition of the spray-dried antibody source to water (column 9, lines 47-49).

However, taken in context, this section of Adalsteinsson refers to a specific mode of administration of the dried egg powder via foodstuffs intended for human consumption:

> The dried egg powder can also be used in drinks, protein supplements and any other nutritional, athlete-associated products which are particularly suited to human consumption. In addition, the egg powder can be used in bake mixes, powder [power?] bars, candies and cookies [Col. 9, lines 47-51].

It is respectfully submitted that, by only applying impermissible hindsight, can this section of the '878 patent be understood to suggest the addition of spray-dried animal blood of any type to a chicken's water supply. It is simply a disclosure of using an egg product in a "sports drink" or in foodstuffs in which egg would conventionally be employed.

Therefore, it is clear from a complete reading of the '878 patent, that it does not disclose or suggest spray-drying animal serum and feeding it to poultry via the water supply, in order to alter the ratio of breast meat to thigh and leg meat. Therefore, withdrawal of this rejection is appropriate, and is respectfully requested.

Even assuming, for argument's sake, that the Examiner has established the *prima facie* obviousness of the claimed process, the Examiner is respectfully urged to consider that the unexpected results achieved by the claimed process are sufficient to rebut any case of obviousness established by this combination of references.

The Examiner is requested to consider the enclosed Rule 132 Declaration by co-inventor Joy M. Campbell, an experienced animal nutritionist. The declaration provides experimental evidence of the unexpected and beneficial results achieved by the present method as disclosed in the specification; namely that: "Quite surprisingly, the weight increase [of the poultry] was seen preferentially in the breast meat yield at the expense of the leg and thigh yield" [page 3, line 31-page 4, line 2]. "When fed to poultry, it has been surprisingly found that in addition to increasing the overall weight of the poultry, the plasma protein composition of this invention preferentially increases the average yield of breast meat at the expense of leg and thigh meat yield. The average increase in yield of breast meat has been found to range between about 6-8%" [page 9, lines 1-5].

The Examiner is requested to consider that, if a process is *prima facie* obvious merely from a consideration of reactants, media and steps employed, the invention as a whole can nevertheless be unobvious within the meaning of 35 U.S.C. § 103 by reason of an unsuggested increase in yield. In re Von Schickh, 150 U.S.P.Q. 300 (C.C.P.A. 1966). In re Shetty, 195 U.S.P.Q. 753 (C.C.P.A. 1977) a new use for an obvious homolog of an "old" drug was found to be patentable, even though the dosage employed is the same as that at which the old drug was given for the old use. ("Inherency of advantage and its obviousness are entirely different questions; obviousness cannot be predicated on what is unknown"). Applicant's allegations of unexpected results cannot be ignored merely because the claimed process is within the broad teachings of the prior art. In re Costello, 178 U.S.P.Q. 290 (C.C.P.A. 1973). When *prima facie* obviousness is established, and evidence is submitted in rebuttal, the decision maker must start over. The earlier holding should not be considered as set in concrete. In re Rinehart, 189 U.S.P.Q. 143 (C.C.P.A. 1976); In re Katzschmann, 146 U.S.P.Q. 66 (C.C.P.A. 1965). Therefore, withdrawal of this rejection is appropriate, and is respectfully requested.

## CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at (612) 373-6905 to facilitate prosecution of this application. Copies of the cited case law are enclosed.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 22 day of November, 2006.

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